

§ 1152.26 Board Determination under 49 U.S.C. 10903.

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(b) * * * Because Board action on abandonment applications by bankrupt railroads is advisory only, no environmental filings or analysis is necessary. See 49 CFR 1105.5(c).

5. Section 1152.29(e)(2) is amended by adding the following two sentences to the end of the paragraph:

§ 1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

(e) * * *

(2) * * * If, however, any legal or regulatory barrier to consummation exists at the end of the one-year time period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier. For good cause shown, a railroad may file a request for an extension of time to file a notice so long as it does so sufficiently in advance of the expiration of the deadline for notifying the Board of consummation to allow for timely processing.

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§ 1152.50 [Amended]

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6. Section 1152.50(d)(2), second sentence, is amended by changing "(e)(5)" to "(e)(4)."

§ 1152.60 [Amended]

7. Section 1152.60(a), third sentence, is amended by adding the phrase "by the Board, through the Director of the Office of Proceedings," after the word "published".

[FR Doc. 97-16902 Filed 6-26-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970311053-7139-02; I.D. 020397B]

RIN 0648-AJ23

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 9 to the Fishery

Management Plan for the Pacific Coast Groundfish Fishery (FMP). Amendment 9 requires a sablefish endorsement on limited entry permits for permit holders to participate in the regular and mop-up limited entry fixed gear sablefish fishery north of 36° N. lat. (the U.S.-Vancouver, Columbia, Eureka, and Monterey management areas). The intended effect of this sablefish endorsement is to promote safety, stability, and economic viability of the sablefish fishery by limiting or reducing harvesting capacity in the Pacific Coast sablefish fishery. This rule also eliminates limited entry permit "B" endorsement language that expired January 1, 1997. Elimination of "B" endorsement language is a routine update of the Pacific Coast groundfish regulations.

DATES: This rule will become effective July 28, 1997.

ADDRESSES: Copies of Amendment 9, the Environmental Assessment (EA) and the Regulatory Impact Review (RIR) are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201. Comments regarding the collection-of-information requirements contained in this rule should be sent to Mr. William Stelle, Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C157000, Seattle, WA 98115-0070; or to Mr. William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney McInnis at 562-980-4040, or the Pacific Fishery Management Council at 503-326-6352.

SUPPLEMENTARY INFORMATION: NMFS issues this final rule to implement a recommendation from the Pacific Fishery Management Council (Council), under the authority of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendation were fully described in the notice of proposed rulemaking for this action (62 FR 13583, March 21, 1997). Public comments were requested through May 5, 1997. Twelve letters were received and are addressed later in the preamble to this final rule. The comments resulted in no change to the regulatory text that was published as a proposed rule.

In summary, a sablefish endorsement will be required on a limited entry permit of a vessel in order for that vessel to harvest sablefish in the area north of 36° N. lat. during the regular (derby or cumulative limit) or mop-up limited entry sablefish fishery. A sablefish endorsement will not be required for a vessel with a limited entry permit to participate in the daily trip limit fishery that operates outside of the time period of the regular or mop-up season. NMFS has accepted the Council's recommendation for sablefish endorsement qualifying criteria: at least 16,000 lb (7,257.5 kg) of sablefish catch from the sablefish fishery, taken in any one calendar year from 1984 through 1994.

Adoption of the above qualifying criteria is a compromise that recognizes historical participation by including the early years of the license limitation qualifying period, that acknowledges more recent participants in the sablefish derby by including 2 years after the Council adoption of the limited entry program, and that considers dependence on the fishery by granting permit endorsements only to those persons who landed quantities of sablefish large enough to constitute a significant portion of their incomes. Maintaining a qualifying requirement that includes years from the mid and late 1980s prevents the disenfranchisement of vessels that were forced to choose between Alaska and West Coast fisheries during the recent years in which the Council set the West Coast opening to coincide with the Alaska opening.

Only persons holding current limited entry permits may qualify for a sablefish endorsement. Permit catch history will be used to determine whether a permit meets the qualifying criteria for a fixed gear sablefish endorsement. Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit, and subsequent catch histories accrued by vessel(s) associated with the limited entry permit or permit rights. If the current permit is the result of the combination of multiple permits, then for the combined permit to qualify for an endorsement, at least one of the permits that were combined must have had sufficient sablefish history to qualify for an endorsement; or the permit must qualify based on catch occurring after it was combined, but taken within the qualifying period. The catch history of a permit also includes the catch of any interim permit held by the current owner of the permit during the appeal of an initial NMFS decision to deny the initial issuance of a limited entry permit, but only if (1) the appeal

for which an interim permit was issued was lost by the appellant, and (2) the owner's current permit was used by the owner in the 1995 limited entry sablefish fishery. The catch history of an interim permit where the full "A" permit was ultimately granted will also be considered part of the catch history of the "A" permit. Only sablefish catch regulated by this part that was taken with longline or fishpot (or trap) gear will be considered in calculating permit catch histories. Harvest taken in tribal sablefish set asides will not be included in calculating permit catch histories. The following clarification, which was not in the proposed rule, has been added to the final rule: Sablefish harvested illegally or landed illegally will not be included in calculating permit catch histories. The qualifying level was set to grant permits to those who substantially depended on the fishery at some point between 1984 and 1994. It was not intended to reward those who violated the laws intended to conserve the fishery.

A sablefish endorsement will be required for a fixed-gear, limited entry vessel to take sablefish in the area north of 36° N. lat. (the Monterey, Eureka, Columbia and U.S.-Vancouver management areas) during the regular and mop-up, limited entry, non-trawl sablefish fishery, as specified in the regulations; this harvest will count against the limited entry fixed gear allocation for the area north of 36° N. lat. Catch taken in the area south of 36° N. lat. counts against a southern area (Conception Area) acceptable biological catch (ABC). In a separate rulemaking action, NMFS is proposing to eliminate the regular and mop-up season south of 36° N. lat., which will result in a year-round, daily trip limit fishery in that area, for which a permit endorsement is not required (62 FR 30305, June 3, 1997).

Under the sablefish endorsement system, if permits are combined to generate a single permit with a larger length endorsement, the resulting permit will receive a sablefish endorsement only if each of the combined permits has an individual sablefish endorsement. This requirement is consistent with the current combination requirements for limited entry permit gear endorsements.

Limited entry permit holders with sablefish endorsements may participate in the regular, limited entry, non-trawl sablefish fishery, under the limited entry regulations. Outside of the regular season, they may catch sablefish with their endorsed gear under the small daily trip limits, under the limited entry regulations. Limited entry permit

holders with sablefish endorsements may also catch sablefish with open access gear other than their endorsed gear, under the open access fishery regulations.

Vessels that do not qualify for an endorsement because of a failure to meet the 16,000 lb (7,257.5 kg) landing requirement may continue to harvest sablefish in the limited entry daily trip limit fishery when the regular season is not open. Limited entry permit holders who do not have sablefish endorsements will be allowed to either use their endorsed gear and fish under the limited entry regulations, or use open access gear and fish under the open access regulations. Limited entry permit holders who do not have sablefish endorsements may not fish for sablefish with either limited entry or open access gear during the regular, and mop-up limited entry, non-trawl sablefish seasons.

Sablefish endorsements will be issued by NMFS, prior to the start of the regular 1997 limited entry fixed gear sablefish season. NMFS will use landings records from the Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) to determine which limited entry fixed gear permit holders meet the qualifications of 16,000 lb (7,257.5 kg) of catch in any one year from 1984 through 1994.

The Fishery Management Division (FMD), NMFS Northwest Region, will notify each limited entry fixed gear permit owner by letter whether PacFIN records indicate that his or her permit qualifies for a sablefish endorsement. Persons who qualify for sablefish endorsements will be issued revised limited entry permits with endorsements, upon payment of a one-time fee of \$797 covering the estimated administrative cost of researching PacFIN records and limited entry permit processing.

If PacFIN records do not show that the permit qualifies for an endorsement, a permit owner who believes that the permit or interim permit qualifies for an endorsement may send supporting documentation, such as fish tickets to the FMD to demonstrate how the qualifying criteria have been met. An endorsement will be issued if the permit owner demonstrates that his or her permit meets the qualifying criteria. If the permit is denied by the FMD after review of documentation submitted by the owner, the owner may appeal the denial to the Regional Administrator, Northwest Region (Regional Administrator). Unlike the initial limited entry permitting process, there

will be no industry appeal board to review appeals of endorsement denials.

Limited Entry Permit "B" Endorsements

All "B" endorsements expired at the end of 1996. This rule eliminates the current regulations that relate to "B" endorsements at 50 CFR 660.336. As of January 1, 1997, these regulations had no relevance.

Comments and Responses

The comments in 12 letters received during the public comment period ending May 5, 1997, are summarized below. All 12 letters opposed the proposed rule.

Comment 1: The Council and NMFS should not alter the rights associated with limited entry permits. Only the permit holder should be able to sell or give up any or all of the rights granted by the issuance of a limited entry permit. This rule will reduce the value of existing limited entry, fixed gear permits that do not qualify for an endorsement.

Response: When the limited entry program was first designed under Amendment 6 to the FMP, permits were viewed as conferring a privilege on a permit holder to operate the permitted vessel in the Pacific coast groundfish fishery, in conformance with the FMP and using the gear(s) for which the permit is endorsed. The Council and NMFS specifically retained the right to revise the FMP in the future, and to change or abolish the privileges associated with limited entry permits. The limited entry program specifically states this in the FMP at 14.1.4, "Nature of the Interest Created."

Comment 2: Amendment 9 would allocate sablefish catch away from smaller producers to larger producers.

Response: A portion of the limited entry, fixed gear sablefish allocation will continue to be available to vessels that do not qualify for sablefish endorsements in the daily trip limit fishery. The trip limit fishery has been traditionally dominated by small producers with annual sablefish landings of less than the 16,000 pounds (7,257.5 kg) qualifying criteria. Small producers who did participate in the regular and mop-up fishery may have to increase their participation in the daily trip limit fishery to ensure that they maintain their past catch levels. It is clear that there will be a shift in harvest opportunity and probably in sablefish harvest from small producers to larger producers. The Council's rationale is to manage the fishery to support fishermen with more substantial dependence on the fishery.

Comment 3: The West Coast Limited Entry fixed gear groundfish fishery is a multi-species fishery. Fishers rely on a variety of species and may change their concentration on certain species from year to year. To permanently exclude someone from the sablefish season because he did not rely on that fishery as his main source of income is unfair and shows a lack of understanding of how the groundfish fisheries operate.

Response: The sablefish endorsement program does not permanently exclude permit holders who do not qualify for endorsements from participating in the limited entry, fixed gear sablefish fishery. While the sablefish endorsement program does exclude unendorsed permit holders from participating in the regular and mop-up fishery, it does not permanently exclude unendorsed permit holders from participating in the limited entry, fixed gear sablefish fishery. Permit holders without sablefish endorsements who want to participate in the regular or mop-up fishery may wish to purchase or lease an endorsed permit for that purpose. NMFS and the Council realize that fishers vary their fishing strategies throughout each year and over the long term for a variety of reasons, such as changing market conditions or natural fluctuations in fish stock availability. However, extensive Council and NMFS analysis has shown that a certain portion of the limited entry, fixed gear fleet is substantially dependent upon the sablefish resource. The sablefish endorsement program limits participation in the regular sablefish season to those persons who have been substantially dependent on the sablefish resource, while the trip limit fishery ensures that persons with a more varied fishing strategy may continue to include sablefish in their annual catch.

Comment 4: The 16,000 lb (7,257.5 kg) qualifying criteria should be changed to 3,000 lb (1,360.78 kg) to recognize the efforts of the small boat fleet. The 16,000 lb (7,257.5 kg) qualifying criteria was set in an arbitrary manner and the Council did not take into account the economic and social impacts of setting that level of qualifying criteria.

Response: The Council staff's June 1996 analysis considered endorsement qualifying criteria of either 3,000 lb (1,360.78 kg) per year or 25,500 lb (11,566.61 kg) per year, and the economic and social impacts that either of these qualifying criteria would have on limited entry, fixed gear permit holders. In order to genuinely constrain effort in the fleet, the Council had to choose between a small landing requirement for a qualifying period that

included fewer years, or a high landing requirement that included more years to encompass early years and more recent years. Reflecting their desire to recognize historic and recent participation, the Council compromised and established qualifying criteria that both include recent participation, and acknowledge fishers whose incomes depend significantly on the sablefish resource. The Council's final analysis includes a discussion of the economic and social impacts of the 16,000 lb (7,257.5 kg) qualifying criteria.

Comment 5: Amendment 9 would allocate sablefish available harvest away from fishers working in waters south of 36° N. lat. to fishers working in the northern portion of the exclusive economic zone.

Response: There is a separate Acceptable Biological Catch (ABC) for the Conception management area (waters south of 36° N. lat.), so division of catch between the two geographic areas will not alter as a result of the sablefish endorsement program. Also, new regulations proposed for the Conception area in another rulemaking would eliminate the opportunity to fish in the primary season south of 36° N. lat. while providing continuing harvesting opportunity under a year-long daily trip limit. The purpose of this change is to discourage effort transfers to the Conception area and maintain catches at historical levels.

Comment 6: Without an endorsement program for the waters south of 36° N. lat., boats from the northern fleet will move their effort to southern waters, competing with the local southern fleet.

Response: Because annual sablefish landings from waters south of 36° N. lat. are relatively low, NMFS has adopted the Council recommendation to apply the endorsement requirement to fishing participation in the primary season, only north of 36° N. lat. Fishers in the area south of 36° N. lat. would not be required to hold an endorsement in the southern area sablefish fishery. NMFS in another rulemaking has proposed to eliminate the primary fishing opportunity south of 36° N. lat., which would result in a trip limit only fishery for the southern area (62 FR 30305, June 3, 1997). Daily trip limits for the southern area are high enough to sustain historic fishing levels and patterns for that area, yet low enough to not provide an incentive for northern boats to shift their fishing efforts to the south.

Comment 7: Sablefish landings from south of 36° N. lat. have been relatively low because fishers in that area must work farther offshore on trips of 7–10 days to catch sablefish, yet are constrained by a daily trip limit that

does not allow them to land all of the sablefish that they are able to catch during those distant trips.

Response: Sablefish fishers, fishing south of 36° N. lat., who wished to catch and land amounts greater than what has been allowed in the daily trip limit fishery also had the opportunity to fish in the primary sablefish season, which, during the qualifying period of 1984 through 1994, started at about 10 months and diminished to 20 days. During the regular season, they were not constrained by the trip limits.

Comment 8: The qualification period of 1984 through 1994 is arbitrary and does not account for recent participation, such as from the 1995 and 1996 seasons.

Response: On February 5, 1992, NMFS published a Notice of Control Date (57 FR 4394), indicating that the Council was considering further access restrictions to the limited entry groundfish fisheries. At that time, the Council intended to consider individual quota (IQ) programs for West Coast halibut and sablefish fisheries. In the Notice of Control Date, NMFS stated, "If IQ programs are adopted, the Council has expressed its intent to exclude from consideration fishing activity occurring after November 13, 1991, in establishing priorities for issuance and shares of individual quotas for these fisheries." Although the Council nearly completed an IQ program, since 1995, the Council has been unable to recommend an IQ program for the fixed gear sablefish fishery due to a series of Congressional actions, including a restriction in NOAA's appropriation prohibiting spending on development of IQ programs and the current Magnuson-Stevens Act moratorium on new IQ programs.

On August 1, 1995, NMFS published another Notice of Control Date (60 FR 39144), this time stating that the Council was considering establishing a sablefish endorsement program for limited entry, fixed gear permit holders to control participation or effort in the regular sablefish season. The notice read "If a limited entry program is established, the Council is considering June 29, 1995, as a possible control date. Consideration of a control date is intended to discourage new entry by nontrawl "A" permit holders into the sablefish fishery based on economic speculation during the Council's deliberation on the issues." A qualifying period ending on June 29, 1995, would not have included the 1995, regular season.

Participation in the sablefish fishery has increased rapidly in recent years, and the regular season declined in

duration to 7 and 5 day fisheries in 1995 and 1996, respectively. The Council could not recommend an IQ program, yet recognized a significant need to constrain the overcapitalization in the fixed gear sablefish fleet. The sablefish endorsement program was designed to limit participation in the limited entry, fixed gear, regular sablefish season. Qualifying criteria for the endorsement include the years 1984 through 1994, a period that recognizes fishing during the limited entry permit qualifying period of 1984 through 1988, as well as recent participation. The decision recognized that in order to work toward rationalization of the fishery, participation had to be limited. The Council and NMFS have considered historic and current participation and have determined the new system is equitable. It includes historic participants with substantial participation in the fishery, but excludes the most recent entrants who came in after the warnings regarding effort limitation.

Comment 9: Permit holders who have recently purchased a permit with the expectation of fishing for sablefish or who did not invest in sablefish gear until 1995 or 1996, and who may have had 1995 and 1996 landings of greater than 16,000 lb (7,257.5 kg) will be unfairly denied sablefish endorsements because the permits that they purchased are not associated with sufficient sablefish landings from the time of the qualifying period for the permit to qualify for the endorsement.

Response: As noted in the response to Comment 8, above, persons owning limited entry permits and persons who purchased limited entry permits in order to participate in the limited entry fishery had ample notice of the Council's intent to restrict participation in the sablefish fishery. In addition to **Federal Register** notification regarding control dates, the Council, when discussing the limited entry program, acknowledged the need to further limit participation in the fixed gear sablefish fishery. There have also been numerous public announcements, hearings, Council newsletters and analyses discussing the Council's intent to recommend limiting access to the fixed gear sablefish fishery. Limited entry permit holders and persons wishing to purchase a limited entry permit to participate in the West Coast groundfish fishery had abundant opportunity to learn that the Council intended to limit access to the sablefish fishery and would qualify participants based on permit catch history. In fact, several persons who have purchased limited entry permits in order to participate in

the West Coast groundfish fishery specifically purchased permits with high sablefish catch history in order to ensure their own future participation in the limited entry, fixed gear, regular sablefish season.

Comment 10: If the Council had not set an IQ control date for 1991, fishers would have accumulated sablefish landings in order to ensure that they would qualify for any later introduction of a limited access program, such as the sablefish endorsement program.

Response: The Council's intent in publishing the control date was to prevent fishers from increasing their landings of certain species on speculation that those species might be included in an IQ program. It would have been irresponsible for the Council to encourage fishers to overcapitalize and increase their rates of landings by announcing an intention to implement an IQ program without announcing a control date.

Comment 11: Limited entry permit holders who are denied sablefish endorsements will shift their effort to other groundfish stocks, increasing fishing pressure on those stocks.

Response: The sablefish endorsement qualifying criteria were specifically designed to recognize a significant annual income dependence on sablefish over a broad range of years. Permit holders who do not meet the qualifying criteria will be those fishers who have not had a significant historic dependence on the regular season for the limited entry, fixed gear sablefish fishery. Limited entry permit holders who are denied sablefish endorsements will still have the opportunity to participate in the daily trip limit fishery. Therefore, it is expected that those persons who are denied sablefish endorsements will not cause a significant increase in fishing pressure on other groundfish stocks.

Comment 12: There should be an appeals process for denial of sablefish endorsements that allows for waiver of denial in cases of hardship.

Response: Unlike the limited entry program's qualifying period of 1984 through 1988, the sablefish endorsement program has a long qualifying period that encompasses the limited entry window period plus more recent years. It is unlikely that a fisher who suffered a hardship over an 11 year period that prevented him or her from qualifying for endorsement could be said to have a significant dependence on sablefish income. Endorsement qualifying criteria consider catch history associated with the permit. If a permit holder purchased a limited permit in recent years but was unable to fish for sablefish with the

permit due to accident or illness, it is expected that the permit holder would have leased his or her permit to another fisher if the permit holder's annual income were significantly dependent on sablefish.

Classification

The Regional Administrator determined that Amendment 9 to the FMP is necessary for the conservation and management of the sablefish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the PRA unless that collection-of-information displays a currently valid OMB control number. This rule's collection-of-information burden is only for those persons who are initially denied sablefish endorsements, but who wish to provide documentation to prove that they have in fact met the endorsement qualifications. It is expected that the public reporting burden will be 2 hours to make an appeal. This is a one-time only collection-of-information, and contains no annual reporting and recordkeeping burden. This collection-of-information was approved by OMB under OMB Control Number 0648-0203. Send comments regarding the collection-of-information burden or any other aspect of the information collection to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Marianas Islands, Reporting and recordkeeping requirements.

Dated: June 24, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.306, new paragraphs (s) and (t) are added to read as follows:

§ 660.306 Prohibitions.

* * * * *
(s) During the “regular” or “mop-up” season described in § 660.323(a)(2)(iii) and (iv), take and retain, possess or land sablefish taken and retained north of 36° N. lat., with longline or trap (or pot) gear, by a vessel with a limited entry permit registered for use with that vessel and endorsed for longline or trap (or pot) gear, that does not have a sablefish endorsement.

(t) During the “regular” or “mop-up” season described in § 660.323(a)(2)(iii) and (iv), take and retain, possess or land sablefish taken and retained north of 36° N. lat., with open access gear, by a vessel with a limited entry permit registered for use with that vessel and endorsed for longline or trap (or pot) gear, that does not have a sablefish endorsement.

3. In § 660.323, paragraph (a)(2) introductory text is revised, paragraphs (a)(2)(i) through (a)(2)(v) are renumbered as (a)(2)(ii) through (a)(2)(vi) respectively, and new (a)(2)(i) is added to read as follows:

§ 660.323 Catch restrictions.

(a) * * *

(2) *Nontrawl sablefish.* This paragraph (a)(2) applies to the regular and mop-up season for the nontrawl limited entry sablefish fishery, except for paragraphs (a)(2)(ii) and (vi) of this section, which also apply to the open-access fishery.

(i) *Sablefish endorsement.* In order to lawfully participate in the regular season or mop-up season for the nontrawl limited entry fishery, the owner of a vessel must hold (by ownership or otherwise) a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement.

* * * * *

4. In § 660.333, paragraph (a), the first sentence of paragraph (c)(1), and

paragraphs (d) and (h)(2)(iii) are revised to read as follows:

§ 660.333 Limited entry fishery—general.

(a) *General.* Participation in the limited entry fishery requires that the owner of a vessel hold (by ownership or otherwise) a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. A sablefish endorsement is also required for a vessel to participate in the regular and/or mop-up seasons for the nontrawl, limited entry sablefish fishery, north of 36° N. lat. There are three types of gear endorsements: “A,” “Provisional A,” and “Designated species B.” More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear; except that during a period when the limited entry fixed gear sablefish fishery is limited to those vessels with sablefish endorsements, a longline or pot (or trap) limited entry permit holder without a sablefish endorsement may not fish for sablefish with open access gear.

* * * * *

(c) *Transfer and registration of limited entry permits and gear endorsements.*

(1) Upon transfer of a limited entry permit, the FMD will reissue the permit in the name of the new permit holder with such gear and, if applicable, species endorsements as are eligible for transfer with the permit. * * *

* * * * *

(d) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden of submitting evidence that the qualification requirements are met. The owner of a permit endorsed for longline or trap (or pot) gear applying for a sablefish endorsement under § 660.336(c)(2) has the burden of submitting evidence that the qualification requirements for a sablefish endorsement are met. The following evidentiary standards apply:

* * * * *

(h) * * *

(2) * * *

(iii) Two or more limited entry permits with “A” gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement. With respect to permits endorsed for nontrawl limited entry gear, a sablefish endorsement will be issued for the new permit only if all of the permits being

combined have sablefish endorsements. The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 2 of this part for the LOA (in feet) endorsed on the respective limited entry permit.

* * * * *

5. In § 660.334, paragraph (a) is revised to read as follows:

§ 660.334 Limited entry permits—“A” endorsement.

(a) A limited entry permit with an “A” endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a sablefish endorsement is required. See § 660.336 for provisions regarding sablefish endorsement requirements.

* * * * *

6. In § 660.335, paragraph (a) is revised to read as follows:

§ 660.335 Limited entry permits—“Provisional A” endorsement.

(a) A “provisional A” endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a fixed gear sablefish endorsement is required. See § 660.336 for provisions regarding sablefish endorsement requirements.

* * * * *

7. § 660.336 is revised to read as follows:

§ 660.336 Limited entry permits—sablefish endorsement.

(a) *General.* Participation in the limited entry fixed gear sablefish fishery during the “regular” or “mop-up” season described in § 660.323 (a)(2)(iii) and (iv) north of 36° N. lat., requires that an owner of a vessel hold (by ownership or otherwise) a limited entry permit, registered for use with that vessel, with a longline or trap (or pot) endorsement and a sablefish endorsement. During a period when the limited entry sablefish fishery is restricted to those limited entry vessels with sablefish endorsements, a vessel with a longline or pot limited entry permit but without a sablefish endorsement cannot be used to harvest sablefish in the open access fishery, even with open access gear.

(1) A sablefish endorsement will be affixed to the permit and will remain valid when the permit is transferred.

(2) A sablefish endorsement is not separable from the limited entry permit,

and therefore may not be transferred separately from the limited entry permit.

(b) *Endorsement qualifying criteria.* A sablefish endorsement will be affixed to any limited entry permit that meets the sablefish endorsement qualifying criteria.

(1) Permit catch history will be used to determine whether a permit meets the qualifying criteria for a fixed gear sablefish endorsement. Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit, and subsequent catch histories accrued when the limited entry permit or permit rights were associated with other vessels. If the current permit is the result of the combination of multiple permits, then for the combined permit to qualify for an endorsement, at least one of the permits that were combined must have had sufficient sablefish history to qualify for an endorsement; or the permit must qualify based on catch occurring after it was combined, but taken within the qualifying period. The catch history of a permit also includes the catch of any interim permit held by the current owner of the permit during the appeal of an initial NMFS decision to deny the initial issuance of a limited entry permit, but only if the appeal for which an interim permit was issued was lost by the appellant, and the owner's current permit was used by the owner in the 1995 limited entry sablefish fishery. The catch history of an interim permit where the full "A" permit was ultimately granted will also be considered part of the catch history of the "A" permit. Only sablefish catch regulated by this part that was taken

with longline or fish trap (or pot) gear will be considered in calculating permit catch histories. Sablefish harvested illegally or landed illegally will not be considered.

(2) The sablefish endorsement qualifying criteria are: At least 16,000 lb (7,257.5 kg) round weight of sablefish caught with longline or trap (or pot) gear in one calendar year from 1984 through 1994. All catch must be sablefish managed under this part. Sablefish taken in tribal set-aside fisheries does not qualify.

(c) *Issuance process.* (1) The FMD will notify each limited entry, fixed gear permit owner by letter of qualification status whether Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) records indicate that his permit qualifies for a sablefish endorsement. A person whose permit qualifies based on PacFIN information will be issued a revised limited entry permit with a sablefish endorsement, upon payment of a one-time processing fee.

(2) If the permit owner receives a letter of qualification status from the FMD indicating that PacFIN records do not show that his or her permit qualifies for a sablefish endorsement and if the permit owner believes that there is sufficient evidence to show that his or her permit does qualify for an endorsement, that permit holder must submit information to the FMD to demonstrate that the permit does qualify for a sablefish endorsement within 30 days of the issuance of the FMD's letter of qualification status. Section 660.333(d) sets out the relevant

evidentiary standards and burden of proof.

(3) After review of the evidence submitted under § 660.336(c)(2), and any additional information the FMD finds to be relevant, the FMD will notify a permit owner if the permit qualifies for a sablefish endorsement. A person whose permit qualifies will be issued a revised limited entry permit with a sablefish endorsement upon payment of the one-time processing fee.

(4) After review of the evidence submitted under § 660.336(c)(2), and any additional information the FMD finds to be relevant, the FMD will notify a permit owner of his determination that the permit does not qualify for a sablefish endorsement.

(5) If permit holder wishes to file an appeal of the determination under § 660.336(c)(4), the appeal must be filed with the Regional Administrator within 30 days of the issuance of the letter (at § 660.336(c)(4)). The appeal must be in writing and must allege facts or circumstances, and include credible evidence, demonstrating why the permit (or interim permit) qualifies for the sablefish endorsement. The appeal of a denial of a sablefish endorsement will not be referred to the Council for a recommendation under § 660.340(e).

(6) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

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